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Attorneys for Defendants WALMART INC.,  
 JASON CORBETT, and ASHLEY HOGAN

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

BARRY ROSS, an individual,

Plaintiff,

v.

WALMART LABS, a California  
 Corporation; WALMART, INC., an  
 Arkansas Corporation; RANDSTAD  
 STAFFING, a California Corporation;  
 RANDSTAD NORTH AMERICA, INC., a  
 Georgia Corporation; RANDSTAD  
 SOURCERIGHT, a Georgia Corporation;  
 JASON CORBETT, an Individual;  
 ASHLEY HOGAN, an Individual; and  
 DOES 1-25, Inclusive,

Defendants.

Case No. 5:21-cv-01945-SI  
 Assigned to Hon. Susan Illston

**DEFENDANTS WALMART INC., JASON  
 CORBETT, AND ASHLEY HOGAN'S<sup>1</sup>  
 OPPOSITION TO PLAINTIFF'S MOTION  
 TO COMPEL**

Hearing Date: October 29, 2021  
 Time: 11:00 a.m.  
 Courtroom: 1

Action Filed: December 1, 2020  
 Action Removed: March 19, 2021

<sup>1</sup> On September 29, 2021, Mr. Hogan filed his Answer in this matter. It is unclear whether Plaintiff intended to file the Motion to Compel against Mr. Hogan. As a precaution, Mr. Hogan joins this opposition brief.

1 **I. INTRODUCTION**

2 Plaintiff Barry Ross (“Plaintiff”) has filed a frivolous motion to compel. Despite failing to  
 3 serve discovery requests on any of the defendants, Plaintiff seeks to compel production of  
 4 documents. Defendants Walmart Inc., Jason Corbett, and Ashley Hogan (“Defendants”) are  
 5 forced to file this opposition brief and respectfully request appropriate sanctions against Plaintiff  
 6 to deter subsequent misconduct. Despite Defendants’ efforts to avoid wasting this Court’s time  
 7 and repeated efforts to inform Plaintiff of this Court’s Local Rules, Plaintiff continues to  
 8 disregard such rules and attempts to circumvent basic procedural rules mandated by statute.  
 9 Plaintiff further muddies the water by raising tangential issues irrelevant to his motion to compel  
 10 or the issue before this Court (e.g., Initial Disclosures regarding General Order No. 71<sup>2</sup>).  
 11 Defendants respectfully request that the Court disregard Plaintiff’s representations as they are  
 12 either grossly exaggerated, not supported by any affidavit, and/or have no bearing to whether the  
 13 Court should grant or deny Plaintiff’s motion to compel.

14 For these reasons, and as described further below, Defendants respectfully request that the  
 15 Court deny Plaintiff’s motion and grant appropriate sanctions.

16 **II. FACTUAL SUMMARY AND PROCECURAL HISTORY**

17 On September 7, 2021, Plaintiff advised counsel for Defendants and Randstad via email  
 18 that he planned to file a formal request for production of documents related to his complaint.  
 19 (Declaration of Noah M. Woo (“Woo Decl.”), ¶ 3, Exhibit A.) Randstad’s counsel reminded  
 20 Plaintiff that he did not have to file discovery requests with the Court, but such requests should be  
 21 served directly on counsel. (Woo Decl., ¶ 4, Exhibit B.) Subsequently, Plaintiff did not serve  
 22 any discovery requests on any defendant. (Woo Decl., ¶ 5.)

23 On September 24, 2021, after Randstad supplemented its initial disclosures pursuant to  
 24 Northern District General Order No. 71,<sup>3</sup> Plaintiff advised Defendants and Randstad that he

25 \_\_\_\_\_  
 26 <sup>2</sup> Plaintiff raises tangential issues with Defendants’ initial disclosures and how only non-confidential  
 27 documents were produced. However, Plaintiff fails to share that Defendants have advised all parties in this  
 28 matter that they were in the process of preparing and circulating a protective order for the purpose of  
 supplementing their disclosures with additional documents. (Exhibit C.)

<sup>3</sup> Plaintiff has entirely failed to meet his obligation to provide initial disclosures pursuant to General Order  
 No. 71, despite his agreement to the September 24, 2021 deadline. (See Dkt. No. 44.)

1 planned to file a motion to compel to seek additional documents, including personnel files<sup>4</sup> and  
 2 investigative reports from Walmart Labs<sup>5</sup>. (Woo Decl., ¶ 6, Exhibit C.) Again, however, he did  
 3 not formally serve any defendant with any requests for production for documents. (Woo Decl., ¶  
 4 7.)

5 On September 27, 2021, despite not serving any discovery on Defendants – or engaging in  
 6 the meet-and-confer process mandated by the Federal Rule of Civil Procedure 37, Local Rule  
 7 37-1, and the Court’s Standing Order, Plaintiff filed the instant Motion to Compel against  
 8 Defendants and Randstad. (Woo Decl., ¶ 8.)

9 On September 28, 2021, Randstad’s counsel and Defendants’ counsel advised Plaintiff  
 10 that he should immediately withdraw his motion to compel because Plaintiff: (1) never served any  
 11 formal document requests on any defendant and (2) failed to meet and confer pursuant to  
 12 Northern District Local Rule 37-1(a). (Woo Decl., ¶ 9, Exhibit D.) Plaintiff was also reminded  
 13 that the motion was a waste of this Court’s time and that Defendants planned on requesting  
 14 sanctions if Defendants were forced to prepare opposition briefs and appear for a hearing. (*Id.*)

15 On September 30, 2021, Plaintiff emailed Defendants and Randstad and accused them of  
 16 engaging in bad-faith actions, while undertaking an off-topic discussion concerning the propriety  
 17 of his case being removed from state to federal court. (Woo Decl., ¶ 10, Exhibit E.) In response,  
 18 Defendants’ counsel provided further clarification that Defendants are simply asking Plaintiff to  
 19 withdraw his motion based on his failure to comply with the Court’s Local Rules. (*Id.*)  
 20 Defendants again informed Plaintiff that it would be a waste of time to move forward with the  
 21 motion. (*Id.*) Randstad’s counsel also urged Plaintiff to withdraw the motion as there was  
 22 nothing for the Court to compel. (*Id.*)

23 On October 1, 2021, Randstad’s counsel again advised Plaintiff that discovery requests  
 24 should be directly served on counsel, not with the Court. (Woo Decl., ¶ 11, Exhibit F.) Plaintiff  
 25 appreciated the clarification but declined to withdraw his motion, unless documents were  
 26

27 <sup>4</sup> Plaintiff’s request for Walmart’s personnel records for associates employees also raises privacy concerns  
 and a protective order will be necessary.

28 <sup>5</sup> Plaintiff repeatedly references a “Walmart Labs” entity in Exhibit A of his motion and the allegations in  
 the Complaint. Walmart Labs is not an actual legal entity.

1 informally produced to him and depositions were confirmed. (*Id.*)

2 As of the filing of this opposing brief, Plaintiff has not withdrawn his motion. (Woo  
3 Decl., ¶ 12.)

### 4 **III. LEGAL ARGUMENT**

#### 5 **A. Plaintiff Did Not Propound Any Discovery On Defendants.**

6 Rule 37 allows a party to move for an order compelling disclosure or discovery. Fed. R.  
7 Civ. P. 37. “A party seeking discovery may move for an order compelling. . . production . . . if . .  
8 . a party fails to produce documents or fails to respond that inspection will be permitted – or fails  
9 to permit inspection – as requested under Rule 34.” *See* Fed. R. Civ. P. 37(a)(3)(B)(iv). Here,  
10 Plaintiff has not served any discovery requests on Defendants. Rather, Plaintiff’s purported  
11 request for documents amounts to a September 7, 2021 email (*see* Exhibit A to Plaintiff’s Motion  
12 to Compel), where Plaintiff states that he “will be filing a formal request for production of  
13 documents.” To date, however, Plaintiff has not served any discovery requests on any defendant.  
14 Further, even assuming *arguendo* that his September 7 email constitutes a valid set of requests for  
15 production of documents, the email is ambiguous as to which documents Plaintiff seeks from  
16 which defendants. Put simply, there are no requests from which to compel production of  
17 documents.

18 Accordingly, Defendants request that the Court deny Plaintiff’s motion.

#### 19 **B. Plaintiff Did Meet-And-Confer With Defendants Prior To Filing His Motion.**

20 Local Rule 37-1 states that the “Court will not entertain a request or a motion to resolve a  
21 disclosure or discovery dispute unless, pursuant to Fed. R. Civ. P. 37, counsel have previously  
22 conferred for the purpose of attempting to resolve all disputed issues.” L.R. 37-1(a). Further,  
23 pursuant to the Court’s Standing Order, the parties shall meet and confer in person, or, if counsel  
24 are located outside the Bay Area, by telephone, to attempt to resolve their dispute informally.  
25 (Rule 3 of Judge Illston’s Standing Order.) A mere exchange of letters, emails, telephone calls,  
26 or facsimile transmissions does not satisfy the requirement to meet and confer. *Id.*

27 As stated above, Plaintiff did not make any attempt to confer in good faith prior to  
28 bringing the instant motion. Despite Defendants’ efforts to confer with Plaintiff after he filed his

1 motion, which included directing Plaintiff to the applicable code sections, Plaintiff did not wish to  
 2 withdraw the instant motion. Federal Rules Code of Civil Procedure Rule 37 also requires a  
 3 certification that the moving party attempted to confer in good faith. Plaintiff did not provide any  
 4 certification in support of his motion. This Court should deny Plaintiff's Motion to Compel on  
 5 the grounds that he failed to engage in the meet and confer process as required by Local Rules  
 6 and Fed. R. Civ. P 37.

7 **C. Rule 37(B) Allows Defendants To Recover Attorneys' Fees As Sanctions.**

8 Rule 37(B) states that if a motion is denied, "the court . . . must, after giving an  
 9 opportunity to be heard, require the movant . . . to pay the party or deponent who opposed the  
 10 motion its reasonable expenses incurred in opposing the motion, including attorney's fees." Fed.  
 11 R. Civ. P. 37(B). Here, there is no basis for Plaintiff to bring this motion. Defendants also  
 12 informed Plaintiff of his failure to serve actual discovery requests and failure to comply with the  
 13 Federal Rules of Civil Procedure, the Northern District's Local Rules, and the Court's Standing  
 14 Order. However, Plaintiff unreasonably refuses to withdraw the instant motion. In total,  
 15 Defendants have incurred \$1,146.50 in attorneys' fees reviewing Plaintiff's motion and preparing  
 16 the instant opposition brief and declaration and expect to incur an additional 1.5 hours preparing  
 17 and appearing for the hearing. (Woo Decl., ¶ 13.) Defendants respectfully request the Court to  
 18 sanction Plaintiff an appropriate amount to deter Plaintiff from filing frivolous discovery motions  
 19 in the future.

20 **IV. CONCLUSION**

21 Defendants respectfully request that this Court deny Plaintiff's Motion to Compel and  
 22 grant their request for sanctions.

23 Date: October 4, 2021

Respectfully submitted,

24 FORD & HARRISON LLP

25 By: /s/Noah M. Woo

26 Timothy L. Reed

27 Noah M. Woo

Attorneys for Defendants

28 Walmart Inc., Ashley Hogan, and Jason

Corbett

**PROOF OF SERVICE**

I am a United States citizen and an employee of FordHarrison, LLP, 1901 Harrison Street, Suite 1650, Oakland, California 94612 located in Alameda County. I am over eighteen (18) years and not a party to the within action.

On October 4, 2021, I electronically served the document described below on the recipients designated on the Notice of Electronic Filing (NEF) generated by the United States District Court, Northern District of California website.

**DEFENDANTS WALMART INC., JASON CORBETT, AND ASHLEY HOGAN'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL**

I declare under penalty of perjury that the foregoing is true and correct and that this document is executed on October 4, 2021, in Oakland, California.

/s/ Maureen E. Lechwar

Maureen E. Lechwar